

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NOS. 383-385 OF 2011

L.K. Venkat ... Petitioner

Versus

Union of India and others ... Respondents

WITH

TRANSFER PETITION (CRIMINAL) NOS. 462-464 OF 2011

Javid Iqbal & others ... Petitioners

Versus

V. Sriharan @ Murugan and others ... Respondents

JUDGMENT

G.S. SINGHVI, J.

1. Although, the parties have made diametrically opposite assertions about the atmosphere which prevailed in the State after rejection by the President of India of the mercy petitions filed by V. Sriharan @ Murugan and two others, we do not consider it necessary to decide whether the support extended by the political outfits and others to those who were found guilty of killing the former Prime Minister Shri Rajiv Gandhi may impede fair adjudication of the writ petitions filed by them warrants transfer of the three writ petitions from the Madras High Court to this Court. However, keeping in view the fact that an identical question is pending consideration before this Court in Writ Petition (Criminal) D. No. 16039 of 2011 titled Devender Pal Singh Bhullar v. State of NCT of Delhi, we deem it proper to exercise power under Article 139A(1) of the Constitution.

2. L. K. Venkat and Javid Iqbal and others have filed these petitions for transfer of Writ Petition No. 20287 of 2011 titled V. Sriharan @ Murugan v. Union of India and others, Writ Petition No. 20288 of 2011 titled T. Suthendraraja @ Santhan v. Union of India and others and Writ Petition No. 20289 of 2011 titled A.G. Perarivalan @ Arivu v. Union of India and others which are pending before the Madras High Court to this Court.

3. The writ petitioners and some others were convicted by the Special Judge for offences under Section 302 read with Section 120B IPC and Sections 3, 4 and 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short, 'TADA') and were sentenced to death. The appeals filed by them were dismissed by this Court vide judgment reported as State v. Nalini (1999) 5 SCC 253.

4. The mercy petitions filed by the writ petitioners were rejected by the President of India on 11.8.2011. Thereafter, they filed three writ petitions, of which particulars have been mentioned hereinabove, for quashing the rejection of the petitions filed by them under Article 72 of the Constitution on the ground of violation of the principles laid down in various judgments of this Court including T.V. Vatheeswaran v. State of Tamil Nadu (1983) 2 SCC 68, Sher Singh v. State of Punjab (1983) 2 SCC 344, K.P. Mohammed v. State of Kerala 1984 (Supp.) SCC 684, Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra (1985) 1

3

SCC 275, Triveniben v. State of Gujarat, (1989) 1 SCC 678, Madhu Mehta v. Union of India (1989) 4 SCC 62, Daya Singh v. Union of India (1991) 3 SCC 61, Shivaji Jaising Babar v. State of Maharashtra (1991) 4 SCC 375 and Jagdish v. State of Madhya Pradesh (2009) 9 SCC 495.

5. The petitioners have sought transfer of the writ petitions by asserting that hearing thereof in the Madras High Court may not be possible in congenial atmosphere because of the agitation launched by different political outfits, extremist groups and lawyers and also because thousands of people gathered in the High Court premises and raised slogans outside and inside the Court premises. The petitioners in the second case have also pleaded that the main question raised in the writ petitions pending before the High Court is identical to the question raised in the cases of Devender Pal Singh Bhullar and Mahendra Nath Das, which are pending before this Court.

6. The Government of Tamil Nadu and some of the private respondents have controverted the petitioners' assertion that the atmosphere in the State is highly surcharged and fair hearing of the writ petitions filed by the convicts is not possible in the Madras High Court. They have pleaded that there is no impediment in the hearing of the writ petitions by the Madras High Court and the same should not be transferred merely because similar issue is pending before this Court. They have also questioned the locus standi of the petitioners to seek transfer of the writ petitions from the Madras High Court by alleging that they are merely busy-body

and are interested in publicity.

7. We have heard learned counsel for the parties. While the counsel representing the Union of India submitted that his client does not have any objection to transfer of the writ petitions from the Madras High Court because similar matters are pending before this Court, Shri Gurukrishna Kumar, learned Additional Advocate General representing the State of Tamil Nadu took up the position that the State Government is not in favour of transfer of the writ petitions because there is no impediment in the hearing of the writ petitions by the High Court. Shri Anil Diwan, learned senior counsel and Shri Jayant Muthraj, learned counsel appearing for the writ petitioners argued that the prayer made in the transfer petitions should not be entertained because the petitioners do not have locus standi in the matter and pre-requisites enumerated in Article 139A(1) of the Constitution for the exercise of power by this Court have not been satisfied. Shri Anil Diwan submitted that even though the issue raised in the writ petitions pending before the High Court is similar to the one raised in the petitions, there is no necessity to transfer the same to this Court because the law laid down in the two writ petitions pending before this Court will govern final adjudication of the cases pending before the High Court.

8. Article 139A which provides for transfer of certain cases reads as under:

"139A. Transfer of certain cases.--(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been

withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court."

9. A reading of the plain language of Clause (1) of Article 139A shows that the power to transfer the particular case or cases can be exercised by this Court either on its own motion or on an application made by the Attorney General of India or by a party to such case(s) provided that the cases involve the same or

substantially the same question(s) of law which is pending before this Court and one or more High Courts or before two or more High Courts and such questions are substantial questions of general importance.

10. There is no dispute between the parties that the question which arises for consideration in the writ petitions filed by V. Sriharan @ Murugan, T. Suthendraraja @ Santhan and A.G. Perarivalan @ Arivu, that is, whether long delay in the decision of the mercy petitions entitles the convicts to seek commutation of death sentence is similar to the one raised in the cases filed by Devender Pal Singh Bhullar and Mahendra Nath Das. In our opinion, that question is of substantial general importance and decision thereof is likely to affect large number of persons who have been convicted by the competent Courts and sentenced to death and whose mercy petitions have remained pending for years together. Therefore, we are satisfied that it will be in the interest of justice to transfer the three writ petitions pending before the Madras High Court to this

6

Court.

11. In the result, the transfer petitions are allowed and Writ Petition No. 20287 of 2011 titled V. Sriharan @ Murugan v. Union of India and others, Writ Petition No. 20288 of 2011 titled T. Suthendraraja @ Santhan v. Union of India and others and Writ Petition No. 20289 of 2011 titled A.G. Perarivalan @ Arivu v. Union of India and others pending before the Madras High Court are transferred to this Court.

12. The Registrar General of the Madras High Court is directed to ensure that the records of the three writ petitions are sent to this Court per messenger within two weeks of the receipt of communication from the Registry of this Court.

13. The transferred cases shall be listed before the Court on 10.7.2012 for final disposal. Notice be issued to the writ petitioners that their case will be taken up for hearing by this Court on 10.7.2012. One set of the notices be also sent to the Superintendent, Central Jail, Vellore, Tamil Nadu, who shall ensure that the same are served upon the writ petitioners well before 10.7.2012.

14. The Registry is directed to send copies of this order to the Registrar General of Madras High Court and Superintendent, Central Jail, Vellore, Tamil Nadu by fax.

.....

directed to ensure that the records of the three writ petitions are sent to this Court per messenger within two weeks of the receipt of communication from the Registry of this Court.

The transferred cases shall be listed before the Court on 10.7.2012 for final disposal. Notice be issued to the writ petitioners that their case will be taken up for hearing by this Court on 10.7.2012. One set of the notices be also sent to the Superintendent, Central Jail, Vellore, Tamil Nadu, who shall ensure that the same are served upon the writ petitioners well before 10.7.2012.

The Registry is directed to send copies of this order to the Registrar General of Madras High Court and Superintendent, Central Jail, Vellore, Tamil Nadu by fax.

(Parveen Kr.Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

[Signed Non-Reportable Judgment is placed on the file]